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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,764	10/24/2003	Stephen C. P. Joseph	57764US005	2185
32692	7590	10/24/2008		
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427				EXAMINER KIM, CHRISTOPHER S
		ART UNIT 3752		PAPER NUMBER
		NOTIFICATION DATE 10/24/2008		DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/693,764	<b>Applicant(s)</b> JOSEPH ET AL.
	<b>Examiner</b> Christopher S. Kim	<b>Art Unit</b> 3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 02 September 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-64 is/are pending in the application.

4a) Of the above claim(s) 4,8-38 and 45-64 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-3,5-7 and 39-44 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 24 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date See Continuation Sheet

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :1/26/04; 5/7/04; 11/22/04; 3/7/05; 10/25/06.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group I, Species F (Figure 16) in the reply filed on November 13, 2007 is acknowledged.
2. Claims 4, 8-38 and 45-64 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 13, 2007.

In the reply filed on September 2, 2008, applicant indicated that claims 8, 9, 11-13, 20, 21 and 35 are readable on the elected species.

Claim 8 recites "...the reservoir has an outlet opening to a connector tube integral with the reservoir, and the connector tube is received in the socket..." in lines 1-2. The feature is only found in the non-elected Species A (figure 5). In elected Species F (figure 16), the connector tube 485 is not integral with the reservoir 402. Claims 9, 11-13, 20 and 21 depend on claim 8. If the "connector tube" of Species F (figure 16) is in reference to the equivalent element of connector tube 15, the connector tube of Species F is not received in an integral socket of the spray gun.

Claim 35 recites "...the end of the sidewall is received in the socket of the spray gun..." in lines 2-3. The feature is only found in the non-elected Species D (figure 12) and Species E (figure 13).

***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "connector boss is formed separately from the body of the spray gun and permanently secured thereto" recited in claim 7; the "air vent" recited in claims 41 and 44; the "disposable container" recited in claim 42; the "inner container" recited in claim 43 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 41, 43 and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 41 recites the limitation "the end" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 43 recites the limitation "an inner container" in line 2. It appears to be a double inclusion of the "disposable container" recited in claim 42.

Claim 44 recites the limitation "the end" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 5-7, 39, 40, 41 are rejected under 35 U.S.C. 102(b) as being anticipated by McRitchie (3,236,459).

McRitchie discloses a liquid spraying apparatus comprising:

a spray gun 10;

a reservoir 18;  
the spray gun having integral connector means 154;  
cooperating connector means 158 on the reservoir 18;  
the spray gun has an integral socket 16.

Claim 7 appears to be a product by process claim. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

#### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-3, 5-7, 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joseph et al. (WO 98/32539) in view of McRitchie (3,236,459).

Joseph discloses a liquid spraying apparatus comprising:

a spray gun 1;  
a reservoir 11;

the spray gun having integral connector means (connection on spray gun 1 for connection to reservoir 11);  
an inner container 13.

Joseph discloses the limitations of the claimed invention with the exception of the non-threaded engagement between the spray gun and reservoir. Joseph discloses, in column 5, lines 38-41, "At the other end 23, the adapter is shaped to match the standard attachment of the spray gun paint pot (typically a screw thread). McRitchie discloses a standard attachment bayonet connection 154. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a non-threaded engagement, such as a bayonet connection, to the device of Joseph as taught by McRitchie to utilize Joseph's device on a bayonet connection spray gun.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher S. Kim/  
Primary Examiner, Art Unit 3752

CK